

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**BASF AGRO B.V., ARNHEM (NL),
WÄDENSWIL BRANCH, BAYER
S.A.S., and MERIAL LIMITED,**

Plaintiffs,

v.

CHEMINOVA, INC.,

Defendant.

Civil Action No. 10-274

JURY TRIAL DEMANDED

**PLAINTIFF MERIAL LIMITED'S ANSWER
TO CHEMINOVA INC.'S COUNTERCLAIMS**

Plaintiff Merial Limited ("Merial") answers the counterclaims filed by Defendant Cheminova, Inc. ("Cheminova") on May 21, 2010 as follows:

1. Upon information and belief, Merial admits the allegations in paragraph 1 of Cheminova's counterclaims.
2. Upon information and belief, Merial admits the allegations in paragraph 2 of Cheminova's counterclaims.
3. Upon information and belief, Merial admits the allegations in paragraph 3 of Cheminova's counterclaims.
4. Merial admits that it is a company limited by shares registered in England and Wales with a registered office in England. Merial is domesticated in the State of Delaware, as Merial LLC. Merial's United States operational headquarters is located in Duluth, Georgia. Merial denies the remaining allegations in paragraph 4 of Cheminova's counterclaims

JURISDICTION AND VENUE

5. Merial admits that the Cheminova's counterclaims purport to bring an action for a declaratory judgment arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the Patent Act, 35 U.S.C. § 101 *et seq.* Merial denies the legal sufficiency of Cheminova's claims and allegations or that Cheminova is entitled to any relief thereunder. Merial denies the remaining allegations in paragraph 5 of Cheminova's counterclaims.

6. Merial admits that this Court has jurisdiction over the subject matter set forth in Cheminova's counterclaims.

7. Merial admits that a justiciable controversy exists with respect to it regarding the allegations in Cheminova's counterclaims pertaining to United States Patent Nos. 6,620,943 and 6,881,848 and that this Court has personal jurisdiction over it with respect to those counterclaims. Merial is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 7 of Cheminova's counterclaims and, therefore, denies them.

8. Merial admits the allegations of paragraph 8 of Cheminova's counterclaims with respect to it. Merial is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 8 of Cheminova's counterclaims and, therefore, denies them.

COUNT I

(Declaratory Judgment of Noninfringement of the '010, '743, '943, and '848 Patents)

9. Merial incorporates by reference its responses to paragraphs 1-8 above as if fully repeated and restated herein.

10. Merial admits the allegations of paragraph 10 of Cheminova's counterclaims with respect to it and United States Patent Nos. 6,620,943 and 6,881,848. Merial is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 10 of Cheminova's counterclaims and, therefore, denies them.

11. Merial is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of Cheminova's counterclaims and, therefore, denies them.

12. Merial denies the allegations in paragraph 12 of Cheminova's counterclaims.

13. Merial is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of Cheminova's counterclaims and, therefore, denies them.

14. Merial admits that Cheminova purports to seek a declaration from this Court that it has not infringed and does not infringe any claims of the '010, '743, '943, and '848 patents. Merial denies the legal sufficiency of Cheminova's claims and allegations or that Cheminova is entitled to any relief thereunder with respect to the '943 and '848 patents. Merial is without knowledge or information sufficient to form a belief as to the legal sufficiency of Cheminova's claims and allegations or that Cheminova is entitled to any relief

thereunder with respect to the '010 and '743 patents and, therefore, denies them. Merial denies the remaining allegations in paragraph 14 of Cheminova's counterclaims.

COUNT II
(Declaratory Judgment of Invalidity of the '010 and '743)

15. Merial incorporates by reference its responses to paragraphs 1-14 above as if fully repeated and restated herein.

16. Merial is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of Cheminova's counterclaims and, therefore, denies them.

17. Merial is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of Cheminova's counterclaims and, therefore, denies them.

18. Merial admits that Cheminova purports to seek a declaration from the Court that each of the claims of the '010 and '743 patents is invalid. Merial is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 18 of Cheminova's counterclaims and, therefore, denies them.

GENERAL DENIAL

Except as specifically admitted herein, Merial denies each and every allegation contained in Cheminova's Answer, Affirmative Defenses, and Counterclaims and denies that Cheminova is entitled to any of the relief requested in its prayer for relief.

AFFIRMATIVE DEFENSES

19. Cheminova has failed to state a claim upon which relief may be granted.
20. Merial specifically reserves the right to assert each and every other defense that may become evident in the course of discovery.

DATED: November 17, 2010

/s/ Jitendra Malik
Jitendra Malik, Ph.D. (NCSB No. 32809)
Attorney for Merial Limited
ALSTON & BIRD, LLP
Suite 4000
101 South Tryon Street
Charlotte, NC 28280-4000
Tel.: (704) 444-1115
Fax.: (704) 444-1695
E-mail: jitty.malik@alston.com

Of Counsel:

Judy Jarecki-Black, Ph.D.
MERIAL LIMITED
3239 Satellite Blvd.
Duluth, GA 30096-4640
Tel.: (678) 638-3805
Fax: (678) 638-3350
judy.jarecki@merial.com

Frank G. Smith, III
John W. Cox, Ph.D.
Matthew W. Howell
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424
Tel.: (404) 881-7000
Fax: (404) 881-7777
frank.smith@alston.com
john.cox@alston.com
matthew.howell@alston.com

Deepro R. Mukerjee
ALSTON & BIRD LLP
90 Park Avenue
New York, NY 10016-1387
Tel.: (212) 210-9501
Fax: (212) 922-3881
deepro.mukerjee@alston.com

J. Patrick Elsevier, Ph.D.
JONES DAY
12265 El Camino Real,
Suite 200
San Diego, CA 92130
Tel.: (858) 314-1200
Fax: (858) 314-1150
jpelsevier@jonesday.com

Counsel for Plaintiff Merial Limited

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed **PLAINTIFF Merial Limited's Answer to Cheminova Inc.'s Counterclaims** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants.

Dated: November 17, 2010

/s/ Jitendra Malik

Jitendra Malik, Ph.D. (NCSB No. 32809)

Attorney for Merial Limited

ALSTON & BIRD LLP

Suite 4000

101 South Tryon Street

Charlotte, NC 28280-4000

Tel.: (704) 444-1115

Fax: (704) 444-1695

E-mail: jitty.malik@alston.com

Counsel for Plaintiff Merial Limited